IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH PARKER	:	CIVIL ACTION
	:	
v.	:	
	:	
CALVIN WILSON and RITA SHESKO	:	NO. 98-3531

MEMORANDUM AND ORDER

HUTTON, J. May 30, 2000

Presently before the Court are the defendants Calvin Wilson and Rita Shesko's Motion for Summary Judgment (Docket No. 23) and Deborah Parker's response thereto (Docket No. 25). For the reasons stated below, Defendants' Motion is **GRANTED in part** and **DENIED without prejudice in part**.

I. BACKGROUND

On July 9, 1998, Deborah Parker ("Plaintiff") filed a Complaint in the United States District Court for the Eastern District of Pennsylvania alleging violations of her constitutional rights under the 4th and 14th Amendments, pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983. The Complaint named three defendants--Officer Calvin Wilson ("Wilson") of the Coatesville Police Department, Sergeant Rita Shesko ("Shesko") of the Coatesville Police Department, and Timothy J. Woolford ("Woolford"), Assistant District Attorney in Chester County. Plaintiff's claims against Woolford were dismissed on or about

February 19, 1999. It is the allegations against Wilson and Shesko which are at issue here.

The core factual allegations against defendants Wilson and Shesko (collectively, the "Defendants") on which Plaintiff bases her Complaint are as follows. On June 19, 1997, Plaintiff parked her red 1986 Ford Econoline Van ("Van") on 7th Avenue in Coatesville, Pennsylvania. She claims that when she returned to her Van, several police officers were searching it. (See Compl. at ¶ 13). She claims that the police officers conducted their search without a search warrant. (See Compl. at ¶ 17). Then, she claims that the police officers had the Van towed away. (See Compl. at ¶ 19).

Plaintiff claims that Shesko and Wilson violated her Fourth and Fourteenth Amendment rights (See Compl. at ¶¶ 39, 40). The Complaint states that the search warrant was drawn up "after the fact," in an effort to cover up "unlawful activities of the police officers and the defendant Assistant District Attorney." (See Compl. at ¶ 24). On October 15, 1997, Plaintiff signed a document entitled "Statement of Automobile Owner," containing a release for civil claims against Woolford and an agreement for return of property ("Release"). The Complaint alleges that Woolford forced her to sign the Release. (See Compl. at ¶¶ 28-29).

Plaintiff claims that she committed no crime, was charged with no crime, and upon receipt of the return of her Van, found that it

was damaged and that items had been stolen from the Van. (See Compl., ¶¶ 30-34, 36). As a result of Defendants' alleged misconduct, Plaintiff contends that her Fourth and Fourteenth Amendment rights were violated, including the right not to have her property unlawfully seized and damaged without due process, as well as threatening her with arrest and confiscation of her property unless she signed a Release. (See Compl. at ¶¶ 40, 41).

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325. Once the movant adequately supports his or her motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the

nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2509 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rules of law. See id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial--that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that a one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

III. DISCUSSION

The Court first considers Plaintiff's § 1983 claim.

A. Section 1983

Plaintiff's claim against Defendants is brought pursuant to § 1983. The pertinent language of § 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. "Section 1983 does not . . . create substantive rights; it provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws." Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996) (citing Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S. Ct. 2689, 2694 n.3 (1979); Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir.), cert. denied, 516 U.S. 858, 116 S. Ct. 165 (1995) (citation omitted)). A plaintiff seeking to advance a claim under § 1983 must establish: (1) the deprivation of a right secured by the United States Constitution or federal law; and (2) that the alleged violation was committed by a person acting under color of state law. See Kneipp, 95 F.3d at 1204. Not every wrong committed by a state actor is actionable under § 1983; only those wrongs that rise to a constitutional violation are actionable. See County of Sacramento

v. Lewis, 523 U.S. 833, 854, 118 S. Ct. 1708, 1720 (1998). It is not disputed that Defendants are state actors who acted under the color of state law and the Court thus holds that the record before it satisfies these legal prerequisites to a § 1983 cause of action. The Court now considers whether a genuine issue of material fact exists such that it is inappropriate to grant summary judgment on Plaintiff's constitutional claims.

1. Fourth Amendment Claim

The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV. The Fourth Amendment protects individuals against unlawful search and seizure. It is therefore axiomatic that the Fourth Amendment requires law enforcement officers to procure and execute a search warrant before conducting a search or seizure, subject to several well established exceptions. See Showers v. Spangler, 183 F.3d 165, 172 (3d Cir. 1992). In order to establish a claim under the Fourth Amendment, a plaintiff must show that the actions of the defendant: (1) constituted a "search" or "seizure" within the meaning of the Fourth Amendment, and (2) were "unreasonable" in light of the surrounding circumstances. See, e.g.,Brower v. County of Inyo, 489 U.S. 593, 595-600, 109 S. Ct. 1378 (1989) (affirming two-fold analysis).

A seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property. See Sodal v. Cook County, 506 U.S. 56, 61-65, 113 S. Ct. 538, 543 (1992). A seizure of property sufficient to implicate Fourth Amendment rights occurs where the seizure is unreasonable. See id. at 71, 113 S. Ct. 549; Cinea v. Certo, 84 F.3d 117, 124 (1996). The Supreme Court has instructed that "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application." Bell v. Wolfish, 441 U.S. 520, 559, 99 S. Ct. 1861 (1979). In determining whether a government seizure violates the Fourth Amendment, however, the seizure must be scrutinized for its overall reasonableness. See Sodal, 506 U.S. at 71, 113 S. Ct. at 549. Such scrutiny requires a careful balancing of governmental and private interests. See id. (citations omitted).

To establish a Fourth Amendment violation under the circumstances of this case, Plaintiff must prove that Defendants effected a seizure of her property and that their conduct was unreasonable. See Carroll v. Borough of State College, 854 F. Supp. 1184 (M.D. Pa. 1994), aff'd, 47 F.3d 30 (3d Cir. 1995). Plaintiff contends that Defendants violated her Fourth Amendment rights when they seized her Van and its contents and destroyed the Van's interior. (See Compl. at ¶¶ 39-40). Plaintiff contends that

the seizure of her Van was unreasonable because Defendants acted without a search warrant. (See Compl. at ¶ 20).

a. Qualified Immunity Defense

Defendants state the defense of qualified immunity. "Because the qualified immunity doctrine provides [an] official with immunity from suit, not simply from trial, . . . the district court should resolve any immunity question at the earliest possible stage of the litigation." Orsati v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995) (citations omitted). "[G]overnment officials performing discretionary functions . . . generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738. Whether a defendant is entitled to qualified immunity hinges on the objective legal reasonableness of the action based on the information the official actually possessed at the time. See Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 3040 (1987). When analyzing a claim of qualified immunity, the trial court must make two inquiries. First, it must identify whether the conduct alleged by the plaintiff violated a clearly established principle of statutory or constitutional law. See Showers v. Spangler, 182 F.3d 165, 171 (3d Cir. 1999); see also Johnson v. Horn, 150 F.3d 276 (3d Cir. 1998); Sharrar v. Felsing, 128 F.3d 810 (3d Cir. 1997). the

specific constitutional right allegedly violated. In the case at bar, Plaintiff alleges a violation of her Fourth Amendment rights. On June 19 and 20, 1997, the legal parameters of a Fourth Amendment search and seizure, as such parameters are relevant to the case at bar, were well established. These inquiries are purely matters of law to be decided by the trial court. Second, the trial court must inquire whether a reasonable person in the defendant's position would have known that his or her conduct would violate a clearly established right. See Showers, 182 F.3d at 171. This inquiry is also a matter of law for the court to decide but sometimes requires the court to make factual determinations concerning a defendant's conduct.

The Court must now determine whether a reasonable person in the position of Defendants would have known that his or her conduct would violate a clearly established constitutional right. Because Defendants assert a qualified immunity defense in their summary judgment motion, Plaintiff bears the initial burden of showing that Defendants' conduct violated a clearly established constitutional right.[1] See Sherwood v. Mulvihill 113 F.3d 396, 399 (3d Cir. 1997). If Plaintiff meets her initial burden then Defendants must

[1] Plaintiff may not rest upon mere allegations to defeat summary judgment. Indeed, a party opposing summary judgment must do more than rest upon mere allegations, general denials, and vague statements. Plaintiff's response to Defendants' Motion for Summary Judgment is silent as to applicable case or statutory law. While Plaintiff cites to various deposition transcripts, her response to Defendants' instant Motion is largely a series of unsubstantiated conclusory statements. At this late date in the proceedings, Plaintiff's case rests almost entirely on the allegations set forth in her Complaint.

demonstrate the absence of an issue of material fact as to the objective reasonableness of Defendants' belief in the lawfulness of each of their actions. See id.

While the Complaint does not name as a defendant Corporal William Waters ("Waters") of the Pennsylvania State Police, the Court's analysis begins with Waters' activities on June 19, 1997, because they triggered the series of events that led to Plaintiff filing the instant action. Plaintiff neither disputes that Waters had probable cause to search her Van nor the reasonableness of Waters' actions. Nevertheless, Waters' actions were reasonable as the Van was parked in an area of Coatesville, Pennsylvania, known to be resident to the drug trade, a line of individuals were standing outside the Van, an anonymous male told Waters that "Nate Parker" was involved and Waters knew Nate Parker to be associated with the drug trade. On these facts alone, Waters had probable cause to search the Van. See Pennsylvania v. Labron, 518 U.S. 938, 940 116 S. Ct. 2485, 2498 1996) (stating that if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle without more). Waters approached the Van, made a cursory inspection of the vehicle, and observed therein drug paraphernalia in plain view. At this time, seizure of the contraband would have been reasonable because Waters had probable cause to associate said incriminating drug paraphernalia with criminal activity. See Soldal v. Cook

County, 506 U.S. 56, 69, 113 S. Ct. 538, 547 (1992). Nevertheless, because he did not have primary jurisdiction over this potential crime scene, Waters called the Coatesville Police and defendant Wilson eventually responded. Waters relayed his observations to Wilson and then together they seized the contraband that was in plain view. The items seized included a semi-automatic pistol, a holster, two handgun magazines, and a clear plastic bottle containing a white rock-like substance. (See Mot. for Summ. J., Ex. C, Coatesville Police - Property Evidence Record, 6/19/97). Wilson then asked for a supervising officer to be dispatched to the Van; defendant Shesko arrived and was advised of the situation by Waters and Wilson. Shesko instructed Waters and Wilson to secure the Van and then obtain a search warrant.

After Shesko arrived at the scene, Plaintiff returned to her Van. Defendants denied Plaintiff access to her Van. When asked by Plaintiff, Defendants told her that they did not at that moment possess a search warrant. Plaintiff alleges that Defendants thereafter "[c]reated paper work, like a bogus search warrant, to cover their unlawful activities." (Compl. at ¶ 20).

Defendants, however, did not need paper work to search the Van or to execute either the seizure of contraband or the seizure of Plaintiff's Van. At least one exception to the Fourth Amendment's warrant requirement is applicable here--the "automobile exception." Police may conduct a warrantless search of a vehicle and any

container found therein if a reasonable police officer has probable cause to believe there is contraband inside the vehicle. See United States v. Ross, 456 U.S. 798, 823, 102 S. Ct. 2157 (1982); see also United States v. Salmon, 944 F.2d 1106, 1123 (3d Cir. 1991)(automobile exception to warrant requirement permits warrantless searches of any part of vehicle, including containers, if there is probable cause to believe the vehicle contains contraband), cert. denied, 502 U.S. 1110, 112 S. Ct. 1213 (1992). The Supreme Court has also recognized the lawfulness of a warrantless seizure of contraband which is situated "in a moving vessel [and] could readily be put out of reach of a search warrant." Florida v. White, 526 U.S. 559, 564, 119 S. Ct. 1555, 1559 (1999) (citation omitted); see also Pennsylvania v. Labron, 518 U.S. 938, 116 S. Ct. 2485 (1996). Therefore, when evidence is in a vehicle, it may properly be seized, so long as there is probable cause to believe that it is contraband. See Maryland v. Dyson, 527 U.S. 465, 466, 119 S. Ct. 2013, 2014 (1999)(stating that in United States v. Ross, 456 U.S. 798, 809, 102 S. Ct. 2157 (1982), it made clear that the "automobile exception" has no separate exigency requirement). Under the "automobile exception," Wilson's actions were reasonable as probable cause[2] clearly existed

[2] The test for probable cause in this circumstance is whether "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 232, 238, 103 S. Ct. 2317 (1983). Determinations of probable cause are based on a review of the "totality of the circumstances," and involve a practical, common sense review of the facts available to the officers at the time of the search. See id. at 230. "[P]robable cause is a fluid concept--turning on the assessment of probabilities in particular factual contexts"

to believe that the items in question, such as a handgun and a clear plastic bottle containing a rock-like substance, were contraband. As Wilson's search of Plaintiff's Van and seizure of the contraband contained therein was clearly reasonable in view of the totality of the circumstances, there is no triable issue regarding said search and seizure. The Court now turns to consideration of the lawfulness of the seizure of Plaintiff's Van.

Fourth Amendment jurisprudence is consistently more permissive in those circumstances where police officers are exercising their duties in public places. See id. at 565, 119 S. Ct. at 1559. The warrantless seizure of a vehicle from a public area has been upheld as the Supreme Court has recognized the need to seize readily movable contraband. See id. at 565, 119 S. Ct. at 1559; see also California v. Carney, 471 U.S. 386, 390, 105 S. Ct. 2066 (1985). In this instance, Defendants first seized contraband from the Van that was in plain view. Defendants, however, did not conduct a thorough and complete search of the Van's interior at that time, although they could have lawfully elected to do so, but chose

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and must be evaluated in light of the totality of the circumstances. Id. at 232. The test for probable cause is an objective test, based on "the facts available to the officers at the moment of arrest." Barna v. City of Perth Amboy, 42 F.3d 809, 819 (3d Cir. 1994) (quoting Beck v. Ohio, 379 U.S. 89, 96, 85 S. Ct. 223 (1964)). An officer may draw inferences based on experience to determine if probable cause exists. See United States v. Ornelas, 517 U.S. 690, 700, 116 S. Ct. 1657 (1996). Probable cause exists where the facts and circumstances within an arresting officer's knowledge are sufficient to warrant a reasonable police officer to believe an offense has been committed. See United States v. McGlory, 968 F.2d 309, 342 (3d Cir. 1992), cert. denied, 506 U.S. 956 (1992); United States v. Cruz, 910 F.2d 1072, 1076 (3d Cir. 1990), cert. denied, 498 U.S. 1039, 111 S. Ct. 709 (1991). The "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying motivation. See Graham v. Conner, 490 U.S. 386, 397, 109 S. Ct. 1865 (1989).

instead to seize the Van and apply for a search warrant. Defendants acted reasonably as there was probable cause to believe that other contraband might be contained in the Van and seizure allowed them to preserve the contraband until a search warrant could be obtained. Moreover, the seizure of Plaintiff's Van was reasonable in this circumstance as any contraband contained therein easily could have been spirited away by, inter alia, Plaintiff who was present and requesting that she be allowed to drive her vehicle away from the place where it was parked. Therefore, the Court finds Defendants' actions were reasonable and that Defendants are entitled to the defense of qualified immunity as to all the events that preceded the issuance of a search warrant for Plaintiff's Van.

The Court now turns to the allegations which concern the events that occurred after Plaintiff's Van was seized. On June 19, 1997, the same day that Defendants seized Plaintiff's van, Wilson completed an application for a search warrant. Said application was approved by District Justice Bicking ("Bicking") on June 20, 1997. Wilson executed the search warrant and retrieved from the Van, inter alia, a plastic container which contained residue, portable scanners, razor blades, and a brown bag containing small plastic packaging bags and two plastic bottles. After chemical analysis, no identifiable fingerprints were found on the items seized and, therefore, no criminal charges were brought. On October 15, 1997, Plaintiff and the Commonwealth entered into an

"Agreement for Return of Property" and a "Statement of Automobile Owner," each of which contained a release of civil claims against the governmental agents involved.

Plaintiff also alleges that Defendants damaged the interior of her Van by destroying the upholstery, panels, dash board, radio, and other components, (see Compl. at ¶ 22), and seeks to support a constitutional claim based on this damage. Defendants argue that because they acted pursuant to Bicking's search warrant, they are immune from liability. Ultimately, however, the destruction of the Van's interior, loss of equipment, and other property loss does not amount to a violation of Plaintiff's constitutional rights. As Plaintiff bears the initial burden of showing that Defendants' conduct violated a clearly established constitutional right and Plaintiff fails to meet her burden, the Court finds that Defendants are entitled to the defense of qualified immunity regarding Plaintiff's Fourth Amendment which concerns the events that took place after the Van was seized. Accordingly, summary judgment will be granted as to Plaintiff's Fourth Amendment claims.

2. Fourteenth Amendment Claims

Plaintiff alleges the seizure of her Van violated her Fourteenth Amendment right to due process of law. (See Compl. at ¶¶ 39-40). Because the protections afforded by the substantive due process component of the due process clause have generally been limited to "matters relating to marriage, family, procreation, and

the right to bodily integrity . . . .", Albright v. Oliver, 510 U.S. 266, 272, 114 S. Ct. 807, 812 (1994) (plurality opinion), and Plaintiff;'s claims concerns none of these matters, the Court treats Plaintiff's claim as one under the procedural due process clause of the Fourteenth Amendment.

There is an established procedure in Pennsylvania for the return of property seized pursuant to a search and seizure. Pennsylvania Rule of Criminal Procedure 324(a) states as follows:

> A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he is entitled to lawful possession thereof. Such motion shall be filed in the Court of Common Pleas for the judicial district in which the property was seized.

Pa. R. Crim. P. 324(a). Plaintiff neither claims that Pennsylvania's procedure for the return of seized property is inadequate nor creates a genuine issue of material fact regarding her due process claim. Therefore, Plaintiff's Fourteenth Amendment claim does not raise an issue suitable for trial.

In a related matter, Plaintiff also alleges that the law does not support the forfeiture of her Van. (See Compl. at ¶ 23). As she now possess her Van, there is no actionable forfeiture. Plaintiff cannot therefore support a cause of action premised on unlawful forfeiture. Accordingly, Defendants' Motion for Summary Judgment will be granted to the extent that Plaintiff seeks relief

under § 1983 for a violation of her Fourteenth Amendment due process rights.

3. State Law Claims

In light of the foregoing decision to grant Defendants' Motion for Summary Judgment on Plaintiff's § 1983 claims, the Court no longer has federal question jurisdiction over this matter. Therefore, Plaintiff's Pennsylvania law claims will be denied with leave to renew in the court of original jurisdiction.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH PARKER	:	CIVIL ACTION
	:	
v.	:	
	:	
CALVIN WILSON and RITA SHESKO	:	NO. 98-3531

FINAL JUDGMENT

AND NOW, this 30th day of May, 2000, upon consideration of defendants Calvin Wilson and Rita Shesko's Motion for Summary Judgment (Docket No. 23) and Deborah Parker's response thereto (Docket No. 25), IT IS HEREBY ORDERED that:

(1) Defendants' instant Motion is **GRANTED** as to each of Plaintiff's federal law claims; and

(2) Defendants' instant Motion is **DENIED** as to each of Plaintiff's state law claims.

IT IS HEREBY FURTHER ORDERED that Plaintiff's lawsuit is **DISMISSED** notwithstanding Plaintiff's right to pursue her state law claims in the court of original jurisdiction.

BY THE COURT:

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HERBERT J. HUTTON, J.